United Nations CAT/C/MNG/2

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
2 June 2015

Original: English
English, French and Spanish only

Committee against Torture

Consideration of reports submitted by States parties under article 19 of the Convention

Second periodic reports of States parties due in 2014

Mongolia* ** ***

[Date received: 23 March 2015]

* The initial report of Mongolia is contained in document CAT/C/MNG/1; it was considered by the Committee at its 963rd and 964th meetings (see CAT/C/SR.963 and 964), held on 5 and 8 November 2010. For the Committee's concluding observations thereon, see document CAT/C/MNG/CO/1.

** The present document is being issued without formal editing.

*** The annex may be consulted in the files of the secretariat.

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Part I. General information

1. As that the general information on the political and legal system of Mongolia is included in the core information in the annexed document submitted to the United Nations, a brief information related to the report is presented in this part.

2. Information in the present report cover the period from 2010–2014.

3. The rights of citizens are guaranteed in the Constitution of Mongolia. With the adoption of the Law on the National Human Rights Commission of Mongolia (hereinafter the "Commission") on 7 December, 2000, the Commission was established in full compliance with the Paris Principles, mandated with the promotion and protection of human rights and charged with monitoring over the implementation of the provisions on human rights and freedoms, provided in the Constitution, and international treaties of Mongolia.

4. The State Great Hural of Mongolia by its resolution No. 41, 2003, adopted the "National Action Program on Human Rights in Mongolia", and the given document increases the initiatives and accountability of governmental organizations and public officials in the efforts to create consistent and efficient mechanims to guarantee human rights and freedoms by the state, to combat violations of human rights and freedoms, to restore violated rights, to expand the participation and improve the effectiveness of civil society, including first and foremost the local self-governing bodies, non-governmental organizations, public media and private sector, and to define directions and measures to broaden citizens' initiatives. This Program is being implemented by the Government since 2003 with each four year phases being adjusted.

5. Mongolia ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the "Convention against Torture") in 2002, and signed the Optional Protocol to the Convention against Torture (hereinafter the "Optional Protocol") during the 68th session of the United Nations General Assembly (i.e. 24 September, 2013). The Optional Protocol was ratified by the State Great Hural on 11 December, 2014.

6. Mongolia submitted its initial report to the Committee against Torture in 2010, and it received the concluding observations by the Committee against Torture that was issued during its 49th session between 1-19 November, 2010.

7. The President of Mongolia, on the basis of his prerogative right to grant a pardon to those on a death row, who are undergoing their sentence within the limits set by the Criminal Code, has called for a *moratorium on all executions* in 2010, and *no person was executed within this time period*.

8. During the reporting period Mongolia for the purposes of ensuring human rights within the framework of legal reforms and based on the recommendations by the Member States of the Human Rights Council ratified the following international conventions, and undertaken internal measures to ensure an implementation thereof. These include:

(1) The International Convention for the Protection of All Persons from Enforced Disappearance, on 9 October, 2014;

(2) The Optional Protocol to the Convention against Torture, on 11 December, 2014;

(3) The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, on 23 April, 2010; and

(4) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, on 5 January, 2012.

9. The State Great Hural has adopted the following laws during its sessions:

(1) Revised Law on Combating Money Laundering and Financing of Terrorism, and other relevant laws in 2013;

(2) Law on Police Service in 2013;

(3) Law on Victim and Witness Protection in 2013;

(4) Law on Providing Legal Assistance to the Indigent Defendants in 2013;

(5) Law on Marshals Service in 2013.

10. In 2009, 20,373 crimes were filed in Mongolia, and 7,513 people received sentences after being convicted by the courts, while in 2013, 25,362 crimes were filed, and 8,067 people received sentences after being convicted by the courts. In 2013, out of the total number of people convicted by the courts 696 were women, while 504 people were children under 18 years of age. During the same period 46.8% of filed crimes were crimes against the right to ownership, and 34% were crimes against the human life and health.

11. The Supreme Court's statistics for the first half of 2013 indicate that out of 4,087 convicted people 3,086 were sentenced to imprisonment, out of which 1,261 people served the prison sentence in person, 1,563 people received a conditional sentence, 243 people were placed under a probation, 188 adults and 9 juveniles received an amnesty. Also 933 people were penalized by the punishment other than the imprisonment such as fine, compulsory work, and arrest.

12. The Ministry of Justice is working towards creation and strengthening of an internal control system of law enforcement organizations (such as the General Police Department, Marshal (Takhar) Service, General Authority of Mongolia on Citizenship and Migration), monitoring the activities and any violations by law enforcement officers, and its prevention. Also risk management system is being implemented.

13. The revised Criminal Code is being drafted to regulate the crimes, criminal sanctions and coercive measures to be imposed for the purposes of protecting the constitutionally enshrined human rights and freedoms, public and national interests, state sovereignty, security and the security of the mankind, while the Law on Misdemeanor is being drafted to regulate the minor offences, types of punishments and measures for the purposes of protecting the legally binding norms established by the laws, legislation and regulations.

14. In accordance with article 19 of the Convention against Torture, Mongolia is submitting its second report on the adoption and implementation of new measures since the submission of the initial report.

15. The present report is jointly prepared by the Ministry of Justice, State General Prosecutor's Office (hereinafter the "General Prosecutor's Office"), General Authority for Implementing Court Decisions, Supreme Court of Mongolia, General Police Department, National Human Rights Commission of Mongolia, and Independent Authority against Corruption (hereinafter the "IAAC"), while the comments and opinion obtained from the participation of the representatives of the civil society were incorporated.

Part II. Implementation, by each article

Article 1

No person shall be subject to torture, inhuman, cruel or degrading treatment. (Paragraph 13 of Article 16 of the Constitution of Mongolia)

16. The objectives of the Criminal Procedure Code of Mongolia "... are prompt and comprehensive detection and investigation of crime, identification of offenders, and securing proper law enforcement in order to impose a person, who committed a crime, a fair punishment, and to secure the innocent so that no innocent person shall be presumed guilty". Also the Criminal Code of Mongolia prohibits torture, inhuman, cruel or degrading treatment, and forcing a testimony from the suspect or the accused, or using torture, and prohibits inhuman, cruel or degrading treatment against these persons, and such acts carry a criminal sanction by law.

17. In Mongolia the following laws and legislation include provisions on prohibiting torture, inhuman, cruel or degrading treatment, and protecting the victims. These include:

(1) Criminal Code;

(2) Criminal Procedure Code;

(3) Law on the National Human Rights Commission of Mongolia;

(4) Law on the Implementation of the Decision regarding the Arrest and Detention of the Suspect or the Accused;

(5) Law on Victim and Witness Protection;

(6) Law on Providing Legal Assistance to the Indigent Defendants;

(7) Anti-Corruption Law;

(8) Civil Code;

(9) Civil Procedure Code;

(10) Law on Police Service;

(11) Law on Marshals Service.

18. In addition to implementing the Convention against Torture through its reflection into domestic laws and legislation, the imposition of criminal liability for the officials, who are authorized to restrict the rights and freedoms of others and to infringe on human rights by the means and measures as prescribed by law, has been strengthened in cases when these officials are suspected of infringing on the rights of others by torture. Consequently, the Criminal Code was amended since the submission of the last report.

19. According to Article 248 of the Criminal Code recognizing as a suspect, charging and sentencing of a knowingly innocent person to criminal liability by an inquiry officer, investigator, prosecutor or a judge for lucrative or other personal motives are subject to criminal liability, and recognizing as a suspect, charging and sentencing for serious or grave crime of a knowingly innocent person or entailing damage in a large amount to the victim are punishable by imprisonment for a term of more than 5 to 10 years with or without deprivation of the right to hold specified positions or engage in a specified business for a term of up to 3 years.

20. Also Article 249 of the Criminal Code legislates, knowingly illegal detention by an inquiry officer, investigator, prosecutor or judge with lucrative or other private purposes shall be punishable by a fine equal to from 51 to 100 times the amount of minimum salary,

or by incarceration for a term of more than 3 to 6 months with or without deprivation of the right to hold specified positions or engage in specified business for a term of up to 3 years, or by imprisonment for a term of up to 3 years. This provision is in line with definition of article 1 of the Convention against Torture, which states, "torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person ... or a third person ... with the consent or acquiescence", and is a reflection into the domestic laws that any illegal acts in violation of human rights by the above officials will fall under one of the categories of torture.

Article 251. Subjecting to a torture

(Title of this article was amended by the law on 1 February, 2008)

251.1. Subjecting to a torture by forcing a testimony by an inquiry officer or investigator by threat or the use of force, torture, humiliation, deception or other illegal methods shall be punishable by imprisonment for a term of up to 5 years with deprivation of the right to hold specified positions or engage in specified business for a term of up to 3 years.

(This provision was amended by the law on 1 February, 2008)

251.2. The same crime if it has entailed a less serious or severe bodily injury or has caused a damage in a large amount shall be punishable by imprisonment for a term of more than 5 to 10 years with deprivation of the right to hold specified positions or engage in specified business for a term of up to 5 years.

(This provision was amended by the law on 1 February, 2008)

251.3. The same crime if it has entailed the death of the victim shall be punishable by imprisonment for a term of more 10 to 15 years.

(This provision was added by the law on 1 February, 2008)

21. Mongolia, as a member of the United Nations, has an obligation to conform to basic principles specified by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention against Torture in legislating the grounds and procedures for restricting the human rights and freedoms in its domestic laws. In this regard, Article 3.4 of the Mongolian National Security Concept stipulates that "The basis for safety of human beings is to create healthy and safe living environment and condition for Mongolians, to ensure food safety, to assure accommodation safety and to protect from crimes and danger" with further assurance in Article 3.3.1.5 providing that "National mechanism shall be strengthened in order to ensure the human rights and freedoms by improving coordination between stakeholders and relevant institutions".

22. The Action Program of the Government of Mongolia for the period of 2012-2016 includes measures to limit the instances of restricting human rights without judicial procedures, to abolish such inquisitorial system of criminal procedure, and to lay the legal foundation for the system of resolving criminal cases under the judicial oversight.

23. Law enforcement officers are entitled to a prerogative right to limit human rights through the use of force and coersion. International human rights standards stipulate the principles for the use of force by the law enforcement officers only when strictly necessary as a last resort and to the extent required for the performance of their duty under full review.[1] However, in Mongolia the power of the law enforcement officials to use force or

[1] "Code of Conduct for Law Enforcement Officials" adopted by the General Assembly resolution 34/169A on 17 December, 1979

coercion are not only provided in very generic terms in laws, but also the grounds for such use are regulated separately in different laws,[2] as well as the procedures for such use are regulated in accordance with the respective regulations jointly adopted by the Prosecutor General and the head of the given organization.[3]

Article 2

24. The Convention against Torture has an equal application to not only the places or objects, where human rights and freedoms are restricted, but also to state institutions providing shelter and foster care for any people dependent on others based on their age, health and physical development, as well as in some instances, the civil society and private sector organizations carrying out governmental functions.

25. The above objectives are reflected into the relevant laws and legislation of Mongolia, for example, Article 14 of the Law on the General Prosecutor's Office provides that the prosecutor shall supervise the following activities on execution of punishment. These include:

> 14.1.1. on whether the arrest, detention and other punishments are carried out in accordance with the grounds and procedures prescribed by law;
>
> 14.1.2. on whether the arrest, detention or imprisonment are in compliance with the conditions and regime established by law;
>
> 14.1.3. on whether the criminal liability and other measures are being used in accordance with the grounds and procedures prescribed by law;
>
> 14.1.4. on whether the legitimate rights of the persons being punished are ensured.
>
> 14.2. The prosecutor in supervising the activities referred to in paragraph 1 of Article 14 of this Law shall exercise the following full powers:
>
> 14.2.1. to demand that the court send the sentencing decree within the time specified in the Criminal Procedure Code;
>
> 14.2.2. to be entitled to an unrestricted access to arrest and detention centers at any time, to be introduced with the decrees, resolutions and documents that constitute the grounds for carrying out the punishment, to meet with the prisoner in person, and if necessary, to obtain explanations and certifications;
>
> 14.2.3. to inspect, and be introduced with the conditions of punishment, and undertake measures to eliminate any violations;
>
> 14.2.4. if specifically prescribed by law on the court decision implementation, to issue a conclusion and appoint an expert;
>
> 14.2.5. to inspect the conditions and regime of arrest and detention, and immediately release any persons detained illegally;

Baste Principles on the Use of Force and Firearms by Law Enforcement Officials. 8th UN Congress, 27 August, 1990

[2] Power and grounds of the law enforcement officer to use a "firearm" are provided by approximately 10 laws, while the power and grounds for the use of "special tools or techniques" are allowed by around 10 laws. *Study conducted by the working group, 2012.*

[3] The procedure is to be adopted, as provided by law, jointly by the Prosecutor General and the head of the given organization, or by the head of the given organization in consideration of the proposal by the state central administrative body and in consultation with the Prosecutor General. *Study conducted by the working group, 2012.*

14.2.6. to participate in the court proceedings related to deferring the execution of sentencing decree, replacing the conviction of fine and compulsory work by other types of conviction, releasing early from serving conviction due to illness, releasing early from serving conviction, replacing non-served part of a conviction by a milder one, changing imprisonment in colony to imprisonment in incarceration or imprisonment in incarceration to imprisonment in colony, and issue a conclusion.

26. In accordance with the above full powers the General Prosecutor's Office inspects the conditions of detention and imprisonment of detainees and prisoners, examines the complaints and requests from them, restores their violated rights, and sends demands and proposals to relevant bodies on the improvement of detention conditions, and ensures the accountability of officials violating the laws.

27. Specific regulations and guidelines were adopted in accordance with the laws within the scope of the powers of the judicial and prosecutors' organizations for the purposes of ensuring the common application of the Criminal Code and Articles 68, 69, 70 and 114 of the Criminal Procedure Code currenlty in force, to ensure human rights are not violated during pre-trial detention at the stage of inquiry and investigation proceedings, to immediately inform the grounds for pre-trial detention to the suspects, the accused persons, their family members and advocates, and to provide opportunities to present their case to the court in person objecting the grounds for pre-trial detention. For example, these include the "Procedures on regulating some measures related to pre-trial detention" dated 30 January, 2008, jointly adopted by the Chief Justice of the Supreme Court and the Prosecutor General, and the "Guidelines on the prosecutor's supervision over exercise of punishments by the convicts" adopted in accordance with resolution No. 214 dated 11 December, 2011, and resolution No. A/14 dated 5 February, 2013, of the Prosecutor General of Mongolia, which are being enforced. "Procedures on regulating some measures related to pre-trial detention" govern relations on ensuring the rights of the suspects and the accused persons in pre-trial detention, provide for the speedy actions by the official in charge of proposing a pre-trial detention order, and notifying the person of the pre-trial detention order, their family members and advocates within 24 hours, and, if necessary, for the judge to meet the detainees in person.

28. "Guidelines on the prosecutor's supervision over exercise of punishments by the convicts" regulates relations pertaining not only for the prosecutor in charge of overseeing the sentencing procedures to monitor, oversee and inspect the execution of sentencing judgment by the court, but also to determine whether the protection and safeguarding of prisons as well as the conditions of convicts conform to relevant standards, to inspect and determine the humidity and the amount of heat in prison rooms, to inspect on a quarterly basis the regime of arrest and detention centers, security guards, opportunity and conditions to obtain health care and assistance, on whether the prisoners are provided with the meal that conforms to the amount and calorie standards prescribed by relevant regulations, and whether the rights of the prisoners are ensured. In addition, there is a regulation that provides that the prosecutor of a higher instance shall inspect the activities of the prosecutor in charge of supervising the exercise of punishment, and to submit for discussion the results of such activities during the council meeting no less than twice per year. Also in line with above methods the officers of the court decision implementing authority are required to immediately inform the Prosecutor General on any instances related to ill-treatment of convicts sentenced to imprisonment or punishment other than the imprisonment, and the suspects and the accused persons in the pre-trial detention as well as on the criminal cases being initiated and investigated.

29. In addition, it regulates relations on receiving, inspecting, and resolution of verbal and written requests and complaints from the arrested and detained persons.

Article 3

30. One of the main goals of the cooperation of Mongolia in the legal sector are to provide and protect the legitimate rights and interests of its citizens and legal entities abroad.

31. The very first treaty was concluded with the Republic of Hungary in 1968 on the "Provision of Mutual Legal Assistance in Civil, Family and Criminal Matters", while the last treaty was established with the People's Republic of China in 2011 on the Extradition of Convicted Offenders.

32. In total 26 treaties were concluded with 19 countries on mutual legal assistance in civil and criminal matters, and on extradition of criminal offenders and convicted offenders. (Appendices 1, 2, 3)

33. In accordance with the Constitution of Mongolia it is prohibited to deprive the citizens of Mongolia from their citizenship, to exile from its motherland, and to extradite to other countries, and article 15 of the Criminal Code thus stipulates, 1) Citizens of Mongolia shall not be extradited to a foreign country for investigation and imposition of a criminal liability; 2) Foreign nationals and stateless persons, who committed crimes beyond the territory of Mongolia and are within the territory of Mongolia, may be extradited to foreign countries to be subjected to criminal liability or for serving punishment as provided for in an international agreement to which Mongolia is a party.

34. Law on the Legal Status of Foreign Nationals was adopted on 8 July, 2010, and it was amended on 26 December, 2013. With this amendment the Mongolian Immigration Office was changed to the General Authority of Mongolia on Citizenship and Migration, and in accordance with the Law on Border Checkpoints, which came into force on 1 April, 2014, its scope of activities were expanded.

35. Article 37 of the Law on the Legal Status of Foreign Nationals provides that if there are no grounds for criminal charges, a foreign national shall be deported if he/she meets one of the following circumstances:

(1) is proved to have entered the territory of Mongolia by using a passport that is invalid or forged;

(2) has failed to leave the country after residence permit expires;

(3) has violated the regulation on visa and registration twice or more times and charged with liability as stated in the present Law;

(4) has undertaken activities prohibited in article 13 of the "Law on Control of the Circulation of Narcotics and Psychotropic Substances";

(5) has been clinically established to have a mental disease *(This article was amended by the law on 13 December, 2012)*;

(6) has used an illegally acquired, counterfeited, or altered passport or visa or residence permit;

(7) has been employed without permission from the competent authorities or engaged in an activity that is different from the purpose of his/her entry;

(8) has failed to follow the Notice to exit the country voluntarily as stated in paragraph 1 of Article 35 of the present Law;

(9) has violated public order twice or more times and has been charged with administrative liability, considering the well-grounded suggestion from the police;

(10) has been considered by the relevant competent authorities to carry out activities that could endanger the national security of Mongolia;

(11) has served his/her term of sentence, released on parole or pardoned, or is to be extradited to his/her country of nationality in accordance with international treaties to which Mongolia is a party;

(12) has failed to leave the country on or before the expiry of the term of a visa.

36. The head of the state administrative body in charge of citizenship and migration issues shall make a decision on the deportation of a foreign national from the territory of Mongolia on the basis of the conclusion made by the state inspector in charge of monitoring foreign nationals.

37. The state administrative body in charge of citizenship and migration issues shall compile a database from the deported foreign national's photograph and fingerprints. The state administrative body in charge of citizenship and migration issues shall implement the decision on deportation in collaboration with the border troops and police force.

38. The state administrative body in charge of citizenship and migration issues shall make a Note indicating the period of entry as banned on the passport and relevant document of deported foreign nationals. A foreign national or the inviter shall be liable to pay the expenses regarding the deportation or if they are unable to pay, the state administrative body in charge of citizenship and migration issues shall be responsible for the payment.

39. *Deportation of foreign nationals from Mongolia shall not be considered as the extradition of convicted criminals between the countries.* Deported foreign national shall be transferred to the country of their nationality.

40. A deported foreign national can be transferred to one of the following countries if the direct transfer to the country of nationality is impossible: (i) the previously resided country or country of birth; (ii) the country of last transit before entering Mongolia; (iii) the country where a visa is issued.

41. Chapter Forty-Six of the Criminal Procedure Code legislates the issues on extraditing the foreign citizens or stateless persons, who committed the crimes or have been charged with a punishment on the territory of a foreign country, while Chapter Forty-Seven regulates the issues on extradition of a person sentenced to imprisonment to the country of his/her jurisdiction, and it states that these shall be regulated in accordance with the conditions and rules provided by international agreements of Mongolia.

42. Even though the Chapters Forty-Six and Forty-Seven of the Criminal Procedure Code provide the grounds for refusing the extradition, these do not contain instances related to "sufficient grounds to consider the endangerment of torture". Despite this it also includes provisions on the grounds for objection in the international agreements, bilaterial treaties and agreements to which Mongolia is a party.

43. The mutual legal assistance treaty includes provisions on the legal protection, and it also may contain some issues of concessions. In accordance with Article 24 of 1954 Hague Convention on Civil Procedures, the Contracting States shall have a right to obtain extracts from civil status records without a charge. The Contracting States shall grant the national regime on equal terms based on the principle of equality.

Article 4

44. By the law to amend the Criminal Code on 1 February, 2008, Article 251 of the special part of the Criminal Code on the crime on "Forcing a testimony" was amended to "Subjecting to a torture", whereby it provides that any acts of forcing a testimony by an inquiry-officer or investigator shall constitute a crime of torture, and the punishment to be

imposed on the inquiry officer and investigator were more severe with a compulsory deprivation of the right to hold specified positions or engage in specified business. *We consider this to be one of the major steps towards implementing the recommendations made by the Committee against Torture to Mongolia*

45. Also paragraph 3 of Article 251 of the Criminal Code provides that if the crime of subjecting to a torture has entailed the death of the victim it shall be punishable by imprisonment for a term of more 10 to 15 years, whereby this crime falls under the classification of a grave crime, which is consistent with the provisions of the Convention in considering that any form of torture shall constitute a crime, and this crime is to be determined as a grave crime.

46. Human rights organizations criticize that according to the current law, the officials responsible for carrying out the "crime of subjecting to a torture" have been limited to the inquiry officer and the investigator only, and Article 14 of Chapter Twenty-One of the draft "Law on Crimes" submitted to the State Great Hural has been amended to "crime of torture", which states, "Public official, who inflicts himself/herself or at the instigation by or with his/her consent or acquiescence a severe pain or suffering, whether physical or mental, on a person or a third person for such purposes as obtaining from him/her information or a confession, imposing a punishment on him/her for an act he/she has committed or is suspected of having committed shall be punishable by a fine of four thousand six hundred and seventy units of account, or by imprisonment for a term of 1 to 5 years", whereby with the extension of the elements of the crime and the expansion of the officials subject to criminal liability makes it in compliance with the provisions of the Convention.

47. Also Chapter Thirteen of the revised draft "Criminal Code" defines as crimes such actions of the law enforcement officials as the infringement on the rights of others by any illegal means, threatening or intimidation of others, tracking down, restricting the rights of others, and puting into detention in the course of crime detection, inspection and proving the case, whereby each of these are considered to be separate crimes. Elements of the crime are being defined more broadly, and these crimes are to carry a criminal liability in the form of imprisonment for a term of 1-5 years, which is compatible with the provisions of the Convention.

Article 5

48. By the law on the amendment to the Criminal Procedure Code on 9 August, 2007, Article 59 of the Criminal Procedure Code was amended to provide, "An inquiry officer or investigator shall be responsible for drafting a decree of arresting a person suspected of committing a crime, and shall deliver it to the prosecutor, and the prosecutor shall submit it to the court for approval. In instances not permitting a delay, an inquiry officer or an investigator may immediately arrest the suspect and deliver the decree to the prosecutor and the court within 24 hours. The court shall be responsible, within forty eight hours from the moment of receiving the decree of arrest, if necessary in the presence of the advocate or the prosecutor, to sanction confinement under guard or free the arrested person." These were important amendments.

49. Article 58 of the Criminal Procedure Code on "the grounds for arresting a suspect" provides, "a suspect shall be arrested if he/she has attempted to escape or if there is sufficient evidence to suspect him/her in committing serious or grave crime". "Procedures on the regulating some measures related to arrest and pre-trial detention" was adopted by the joint order No. 07/26 of the Chief Justice of the Supreme Court and the Prosecutor General dated 30 January, 2008, as a methodological guidance on the implementation of this provision.

50. Currently, in Mongolia the police, intelligence agency and the IAAC carry out a function to combat the crimes under the jurisdiction specified in the Criminal Procedure Code.

51. For example, the General Intelligence Agency in accordance with the Criminal Procedure Code has a function to combat 20 types of crimes as specified by the Criminal Code; IAAC with 10 types of crimes as defined in the Criminal Code; and the police has a function to combat 182 types of crimes as stipulated in the Criminal Code. More than 30 out of 182 types of crimes that fall under the jurisdiction of the police include new types of crimes in Mongolia such as the drug trafficking, human trafficking, and money laundering that constitute covert transnational organized crimes.

52. The draft law to amend the Criminal Procedure Code is being produced for the purposes of defining the jurisdiction to conduct investigation, as well as to determine the jurisdiction of the newly established Marshals Service. Provision 1.5 of Chapter One of the Recommendations of the Supreme Court states, "the judge within forty eight hours of receiving the decree on the arrest of the suspect (in urgent cases) may, if necessary, in the presence of the prosecutor and advocate, in issuing a judicial order to either sanction confinement under guard or free the arrested person".

53. Consequently, the regulation on the mandatory issuance of the judicial order (decision) and review of the arrest of the suspect not only in urgent but also in ordinary cases makes this provision novel and consistent with the principle of human rights.

54. The coersive measures of isolated confinement have common characteristics such as the temporary custody through administrative procedures, detention, or transportation of the suspected person to the appropriate organization; however, in practice these measures are sometimes undertaken in succession. For example, prior to arresting the suspect he/she is placed under temporary custody for 72 hours through administrative procedures, and then after undergoing arrest for 7-30 days if the given offence constitutes characteristic of a criminal offence then an issue arises on the continuation of the arrest or detention of the person, who has been placed under custody through administrative procedures, without counting the time he/she spent in administrative custody into the total time being incarcerated for the purposes of the investigation. (Appendix 4)

55. It should be mentioned that in the case of the "person being caught in the act of committing the crime or immediately after committing it", which constitutes one of the grounds for considering the person as a suspect, the time period for restricting the right to free movement by the law enforcement officer in order to transport the person for handing over to the competent authority also constitutes one form of coercive measure to isolate the person.

56. Many proposals were received from the judicial organizations and law enforcement organizations, and international human rights organizations as well as research institutes that made recommendations on the need to amend some articles of 2002 Criminal Procedure Code for the purposes of making the regulations clear on articles that do not generate a common understanding on the application of the Code, and to regulate the relations that are left unregulated.

57. The Government after studying these proposals and recommendations developed a draft amendment law on the Criminal Procedure Code, which was submitted to the State Great Hural and adopted on 9 August, 2007. The following is the summary of these amendments:

(1) Sub-paragraph 6, paragraph 1 of Article 40 is being added that provides that if the suspect or the accused without the financial means, makes a request for the advocate then an advocate shall be mandatorily present for their criminal proceedings for the

purposes of expanding the legal assistance to vulnerable groups, and to guarantee their right to defense.

(2) The lack of provisions on the official in charge of issuing a decision on transferring the suspects or the accused persons to another location for pre-trial detention was regulated by paragraph 10 of Article 68, whereby the judge is to issue a judicial order based on the proposal by the prosecutor to transfer the suspect or the accused person to another detention center, and the family members or the advocates of the suspects or the accused persons are to be informed.

(3) Paragraph 10 of Article 69 was added, which provides for the presence of the advocate or the prosecutor when the judge makes a decision on the extention of the time period for pre-trial detention if the judge considers it necessary, or if the advocate so requests. This way, in making a decision on the continuation of the pre-trial detention the judges are able to realistically review and resolve the case based on the grounds and evidence provided by the prosecutor and the advocate.

(4) The Criminal Procedure Code provides that a complaint regarding the judicial decision on pre-trial detention shall be reviewed and resolved by the Chief Justice or in his/her absence the judge appointed by the Chief Justice. However, there was no clear provision on whether there exists a possibility for appealing this judicial decision. Consequently, it was amended to stipulate that the decision by the Chief Justice or the judge appointed by the Chief Justice shall be a final decision.

(5) Also Article 172 was amended and broadly expanded to include provisions for the competent prison officer to carry out immediate measures on the territory of the prison if there is a suspicion that the convicted criminal has committed a crime, and the same for the executive officer of the intelligence agency in relation to the crime committed on the territory of the border zone, for the customs inspector in relation to the crimes discovered during the customs control and inspection, for the competent officer of the fire department in relation to determining the causes of fire, and for the commanding officer in charge of soldiers and the police in relation to the crimes committed by the soldier or the police officer during their peacekeeping or other missions of international organizations in view of the difficulties that might incur such as the crime scene contamination and loss of time prior to police investigation of the crime that took place in the territory adjacent to prisons or border zone, as well as the need for the intelligence officers to carry out measures to preserve the traces of crime, to establish the causes of fire, and to investigate the crime discovered during the customs control.

(6) If the cases that were returned to the prosecution for additional inquiry, as well as the ones that were suspended or dismissed are re-opened the prosecutor shall extend the period of inquiry for up to 15 days.

(7) An addition was made to the law, where the court shall send the case back to the inquiry and investigation proceedings if it considers it necessary to add an additional sentence to the case previously heard and sentenced by the court or if the case needs to be changed to a more severe case on these grounds.

(8) Paragraph 6 of Article 263 was added into the Criminal Procedure Code that provides for the procedure on the interrogation of a defendant in the absence of another defendant to be permitted when it has special importance in establishing the truth in the case, which is also to be applied in the case of a minor defendant.

(9) Previously, there were no legal grounds for a competent authority to lodge a complaint or objection to the Supreme Court (court of supervisory instance) if it considered that the Criminal Code has been incorrectly applied or that the Criminal Procedure Code has been violated. Consequently, paragraph 2 of Article 342 of the Criminal Procedure

Code was added that provides, "the court of supervisory instance shall mandatorily consider and resolve the complaint or objection that is lodged by the appellate court on the grounds that the Criminal Code has been incorrectly applied or that the Criminal Procedure Code has been violated" for the purposes of creating a common understanding of the law and its correct application.

(10) Paragraph 2 of Article 370 was added to the Criminal Procedure Code that legislates, "if the advocate of the minor suspect or the accused makes such a request the interrogation may be verified by a video recording through their own expenses", which ensures the rights of minors during interrogation, as well as it documents the interrogation process.

58. Amended articles and provisions of the Criminal Procedure Code:

(1) Sub-paragraph 11 and paragraph 1 of Article 5 was amended, where the term "family member" was expanded to include the previously excluded persons such as the family members of the victims and witnesses, who constitute the main participants of the criminal proceedings.

(2) Article 34 was amended for the citizens' representative to submit in writing his/her opinion regarding the guilt of defendant only, and to read it aloud during the court litigation, as well as for 3 citizens' representatives to be present in the court composed of three judges, resolving the case in the first instance.

(3) Paragraph 3 of Article 38 was revised to ensure the right of the advocate to be present from the start of the immediate measures.

(4) Paragraph 1 of Article 59 and paragraph 3 of Article 68, which stated that the prosecutor shall submit the decree on arrest or detention to the court for approval, were amended for the court to issue a resolution on the arrest or detention in accordance with the Law on Courts and the Criminal Procedure Code, which provide for the courts to render a decision and for the judges to issue orders.

(5) Articles 69 and 366 that stated for the term of investigation with confinement of a minor accused to be extended for up to 18 months, and for the total term of investigation with confinement of the adult accused to be extended for up to 24 months were amended to comply with the provisions of the international treaties ratified by Mongolia, to ensure speedy investigation and resolution of the case, and to reduce possibilities for limiting human rights without justification in order to provide for differentiated total term of investigation with confinement in less serious, serious, and grave crimes.

Article 6

59. Article 14 of the International Covenant on Civil and Political Rights that Mongolia ratified as well as the Constitution of Mongolia and other laws guarantee the right of all persons to equality before the courts. Every person shall be presumed innocent until proved guilty by the court through the due process of law.

60. During the last period, the National Human Rights Commission received 3,229 complaints, of which about 70% or around 2,260 complaints were related to criminal proceedings. 13% of these were complaints on the subjecting to torture by the inquiry officers and investigators.

61. In addition, 18% of these complaints were related to arrest and detention, as well as the ethical conduct and attitudes of inquiry officers and investigators. For example, out of 669 complaints received in 2013, 289 or 43.2% of complaints were received from the suspects and the accused in pre-trial detention, as well as the convicted offenders in prisons.

166 of these complaints claimed that they were falsely accused or were tortured, and the Commission considers that the petitioners of 29 or 17.5% of complaints received during the inspections may have become the victims of torture.

62. Order No. A-12 of the Prosecutor General dated 13 February, 2014, provides that the 6th professional division on rendering support to the investigation proceedings of the General Police Department shall conduct inquiry and investigation proceedings in relation to the case under the jurisdiction of the Prosecutor's Office, and by the order No. 95 of the Chief of the General Police Department dated 14 February, 2014, 6th division for investigation of special persons was established.

63. Since its establishment, the 6th division received 16 complaints that fell under the jurisdiction of the Prosecutor's Office, and after conducting inquiry and investigation proceedings in relation to 9 criminal cases, 1 criminal case alleged being subjected to torture for the purposes of obtaining a confession. As a consequence of carrying out investigations of this criminal case, it was dismissed on the grounds of the absence of the elements of a crime after it was determined that it cannot establish the act of guilt by the police officer. (Appendix 6)

64. In accordance with paragraph 2 of article 18 of the Law on Police Service, which was newly amended by the State Great Hural (5 July, 2013), that legislates "...it shall have a Vice Chairman in charge of ensuring internal monitoring-security" the Internal Monitoring-Security Department was established and included into the structure of the General Police Department.

65. In 2010, 251 persons were detained in pre-trial detention centers, in 2011 there were 237 pre-trial detainees, in 2012 there were 322 pre-trial detainees, and in 2013 there were 273 pre-trial detainees respectively, and there were no cases of pre-trial detention without the sentencing decree by the inquiry officer and investigators.

66. On the condition of detention centers:

- *Location, capacity*: Nationally, 26 detention centers conduct their operations under the jurisdiction of the General Authority for Implementing Court Decisions, out of which 1 detention center is located in the capital city, 21 detention centers are located in aimags, 1 detention center each is located in Mandal soum of Selenge aimag, Kharkhorin soum of Uvurkhangai aimag, Tosontsengel soum of Zavkhan aimag, and Baganuur district respectively, while one arrest center is located in Nalaikh district. Detention center in the capital city has the capacity for 1,000 detainees, detention centers in aimags have the capacity for 24-60 detainees, detention center in Darkhan-Uul aimag has the capacity for 80 detainees, detention center in Tuv aimag has the capacity for 100 detainees, detention center in Orkhon aimag has the capacity for 200 detainees, and, as of today, detention center in Dornod aimag houses 92 detainees despite the capacity for 42 detainees, whereby its capacity has exceeded two-fold. Detention centers in Bayankhongor, Huvsgul, and Arkhangai aimags respectively can no longer accept detainees because they exceeded their capacity, while other detention centers are conducting their operations as usual.

- *Number of pre-trial detainees*: A total of 1,303 detainees (6 foreign citizens: 4 are housed at the detention center No. 461, where 2 are from the People's Republic of China, 1 is from the Russian Federation and 1 is from Bangladesh, while 1 Georgian is housed at the court decision implementing authority of Dornod aimag, and 1 Kazakh is located at the court decision implementing authority of Bayan-Ulgii aimag), out of whom there are 1,194 male adults, 77 female adults, 31 male minors, and 1 female minor. There are 35 detainees, who are being detained and investigated

for over a year, at the detention centers under the jurisdiction of the General Authority for Implementing Court Decisions.

67. On average there are about 4,500 suspects and accused persons per year, who get a pre-trial detention order, and at the end of 2013 there was an increase in the number of detainees up to 7,767 persons, while in the first half of 2014 there was an increase in the number of detainees up to 4,271 persons. Out of these 3,536 detainees received a punishment of imprisonment or arrest by the court order in 2013, while 1,889 detainees were imprisoned or arrested by the court order in the first half of 2014.

68. In 2013, 649 suspects or the accused persons were released by the court order, 274 detainees were released by the order of the chief of the arrest or detention center, while in the first half of 2014, 298 detainees were released by the court order, and 193 detainees were released by the order of the chief of the arrest or detention center respectively.

Article 7

69. Provision 9 of the concluding observations of the Committee against Torture during its 49th session on 19 January, 2010, on the report submitted by the Government of Mongolia states, "the State party is urged to bring impunity to an end and ensure that torture and ill-treatment by public officials will not be tolerated and that all alleged perpetrators of acts of torture will be investigated and, if appropriate, prosecuted, convicted and punished with penalties appropriate to the gravity of the crime. The State party should ensure that efficient and independent investigative mechanisms be established against impunity regarding torture and ill-treatment."

70. Provision 13 of the concluding observations of the Human Rights Committee during its 2297th session in 2011 on the report submitted by Mongolia provides, "the State party should ensure that the Investigative Unit has the necessary authority, independence and resources to adequately investigate all offences committed by the police".

71. The Investigative Unit at the State General Prosecutor's Office started to conduct its operations in accordance with resolution No. 47 of the State Great Hural of Mongolia dated 4 July, 2002, and resolution No. 179 of the Government of Mongolia dated 4 September, 2002, with 26 vacancies from 11 September, 2002, and following the adoption of the law on the amendment to the Criminal Procedure Code on 24 January, 2014, and the law on the invalidation of some provisions of the Law on Prosecutor's Office by the State Great Hural, as well as in accordance with resolution No. 22 of the State Great Hural dated 24 January, 2014, the investigation of 10 types of crimes specified in the Criminal Code fell under the jurisdiction of the Independent Authority against Corruption. Consequently, some of the vacancies and functions of the Investigative Unit at the General Prosecutor's Office were transferred to the IAAC, and some of its functions were transferred to the Investigative Division of the Police Department.

72. In other words, the jurisdiction of the Investigative Unit at the General Prosecutor's Office to exercise inquiry and investigation in relation to the crimes on malfeasance in office and corruption committed by the intelligence officers, police officers, inquiry officers, investigators, prosecutors, and judges have been transferred to the jurisdiction of the IAAC.

73. However, the jurisdiction to investigate other types of crimes committed by the aforementioned persons has been transferred to the Police Department.

74. Information related to the statistical data of the secretariat of the Investigative Unit at the General Prosecutor's Office is attached. (Appendix 6)

Article 8

75. Paragraph 2 of Article 15 of the Constitution of Mongolia provides, "Deprivation of Mongolian citizenship, exile and extradition of citizens of Mongolia shall be prohibited", which constitutes the main legal guarantee of the state to protect the rights and legitimate interests of its citizens.

76. Paragraph 1 of Article 15 of the Criminal Code of Mongolia legislates, "Citizens of Mongolia shall not be extradited to a foreign state to be investigated in a criminal case or to be subjected to criminal liability", which demonstrates the fact that the Criminal Code serves as one of the guarantors of the principle of citizenship, as well as the principle of humanity for the citizen to enjoy the protection of their state.

77. The principle of citizenship, which constitutes one of the principles for establishing the application of the Criminal Code, has a meaning stating that all persons who have committed crimes on the territory of Mongolia shall be subjected to criminal liability under this Code. The term "all persons" include Mongolian citizens, foreign citizens and stateless persons.

78. On the other hand, the matter of criminal liability of the persons who enjoy diplomatic immunity and their family members is decided in accordance with the international agreements to which Mongolia is a party. The principle of humanity is a unique concept that serves two purposes, where its first purpose is to ensure the security of the members of the society from criminal infringement, and to restore their violated rights, and its second purpose is to provide the human rights of the people, who are guilty in committing the crimes, suspected, convicted, or defending their rights in courts.

79. Also paragraph 2 of Article 15 of the Criminal Code provides, "foreign nationals and stateless persons who committed crimes beyond the territory of Mongolia and are within the territory of Mongolia may be extradited to foreign states to be subjected to criminal liability or for serving punishment as provided for in an international agreement to which Mongolia is a party".

80. This constitutes the grounds for imposing the criminal liability on foreign citizens and stateless persons in accordance with the Criminal Code of the territory, where the crimes were committed, as well as for the State to conduct criminal proceedings in accordance with the jurisdiction of the case and territory.

81. There are three grounds for such extradition to foreign countries. These include:

- Extradition is carried out on the basis of grounds and procedures outlined in the multilateral treaties on combating certain types of crimes. For example, 1948 Convention on the Prevention and Punishment of the Crime of Genocide. In this case, the Contracting Parties undertake a responsibility to transfer the criminals in accordance with the laws and treaties in force;
- Criminals are extradited on the basis of the multilateral conventions and treaties on the provision of assistance in criminal matters. Here 1957 European Convention on Extradition, 1979 International Convention against the Taking of Hostages, and 1970 Convention for the Suppression of Unlawful Seizure of Aircraft directly provide provisions on extradition procedures;
- Criminals are extradited on the basis of bilateral treaties on the provision of mutual legal assistance in criminal matters. For example, the Treaty on the Extradition of Criminal Offenders established between Mongolia and the People's Republic of China.

82. In addition to the above grounds it is possible to make a request to foreign countries through diplomatic channels to transfer the convicted offenders in the form of a mutual assistance.

83. On the other hand, the procedures for transferring the criminals are reflected in the Criminal Procedure Code of Mongolia. Paragraph 1 of Article 404 of the Criminal Procedure Code of Mongolia states, "request to extradite a citizen of Mongolia who has left for a foreign country after committing a crime on the territory of Mongolia shall be made before an authorized organization of the foreign country in accordance with the rules provided by law and international agreements".

84. The request to extradite Mongolian citizen means the official written proposal for the extradition of the person, who committed the crime on the territory of Mongolia and is known to reside permanently or short-term in any of the foreign countries, for his/her extradition to Mongolia.

85. Foreign authorized organization means the courts, prosecutor's office, investigative office and all other competent authorities for conducting the criminal proceedings.

86. This must be consistent with the procedures set forth in the laws and legislation of Mongolia, as well as the international agreements. For example, the Chapter Forty-Six of the Criminal Procedure Code on the "Extradition of Criminals" (also Articles 404, 405, 406, 407, 408 of the said Code) regulates the issues on the extraditon of criminals for the purposes of charging with a criminal liability and the enforcement of the decree of sentencing.

87. These provisions regulate relations on the extradition of Mongolian citizen to Mongolia, who has escaped to a foreign country after committing a crime on the territory of Mongolia, irrespective of the classification of the crime, to transfer a foreign citizen, a person with dual citizenship, or a stateless person to a foregin country, who have committed a crime on the territory of Mongolia, or extradition of Mongolian citizen to Mongolia, who has committed a crime on the territory of a foreign country. In addition, Chapter Forty-Seven of the said Code (also Articles 410, 411, 412, 413) regulates relations on the extradition of criminals to the countries of his/her jurisdiction for the purposes of carrying out the punishment as well as refusing to extradite.

Article 9

88. Request for extradition of the criminal for the purposes of charging with a criminal liability or enforcement of the decree of sentencing to the authorized organization of the foreign country shall be made in accordance with the procedures provided by law and international agreements.

89. Article 406 of the Criminal Procedure Code is an important article that protects the fundamental rights of the person, who committed the crime, and the one that ensures that their legal status does not deteriorate.

90. It is prohibited to extradite a person, who is a citizen of Mongolia, or a person irrespective of their citizenship if he/she has been awarded asylum in Mongolia, or if the grounds for the request to extradite are not considered to be a crime in Mongolia, or if the person to be extradited has been sentenced for the particular crime before and carried out his/her sentence, or if the criminal case has been previously dismissed, or if the statute of limitation for the particular crime has expired in accordance with the legislation of Mongolia, or if there are circumstances based on other grounds excluding initiation of a criminal case or sentencing.

91. As provided in Article 410 of the Criminal Procedure Code, extradition of a convicted offender carrying out his/her sentencing in Mongolia to the country of his/her

jurisdiction is to be conducted in accordance with the conditions and procedures provided by international agreements of Mongoila established with the respective country, and, unless otherwise provided in the international agreements of Mongolia, decision on the extradition of a person sentenced to imprisonment by a court of Mongolia to the country of his/her jurisdiction shall be made by the Prosecutor General of Mongolia.

92. Bilateral agreements concluded by Mongolia apart from the general features have the following specific attributes. People's Republic of China: Where the request for extradition relates to execution of a sentence of penalty, extradition shall be granted only if a period of at least six months in the sentence remains to be served.

93. Extradition shall not be granted if the requested party has substantial grounds to believe that the request for extradition has been made for the purpose of prosecuting or punishing the person sought on account of that person's race, religion, nationality, sex or political opinion, or that the person's position in judicial proceedings may be prejudiced for any of the above-mentioned reasons: the offence for which extradition is requested is exclusively a military offence under the law of the requesting Party; or the requested Party in accordance with its law has jurisdiction over the offence for which extradition is requested, and, in this respect, criminal proceedings are being carried out.

94. The requesting Party shall notify the requested Party in time of the information relating to the proceedings against or the execution of punishment upon the person extradited or the re-extradition of that person to a third state.

95. Republic of India: An extradition offence includes an offence related to taxation or revenue or is one of a purely fiscal character. Also for any person to abet, conspire or attempt to commit, or incite or participate as an accomplice in the commission of, any extradition offence shall be considered an offence. If the extradition is not permitted according to the laws of the Requesting Party, or if the offence of which he/she is accused or convicted is a military offence then these shall constitute the grounds for refusal of extradition.

96. If under the law of the Requesting Party the person sought is liable to the death penalty for the offence for which his extradition is requested, but the law of the requested Party does not provide for the death penalty for the same offence, extradition may be refused, unless the Requesting Party gives such assurances as the Requested Party considers sufficient that the death penalty will not be carried out.

Article 10

97. The curriculum of the Police School, Law Enforcement University, include the academic subjects that fully reflect the content and ideas of the Convention against Torture, and subjects on learning the methods to "Prevent from Torture". In accordance with the curriculum in total 4,909 students of 161 courses received the training for the period of 2008-2013.

98. Students of the Police School, Law Enforcement University, in compliance with the approved curriculum, are graduating after completing the required number of credits on acquiring the necessary knowledge and skills to respect, protect and ensure the exercise of human rights.

99. In the stated period, the vocational training center to support the General Police Department organized a total of 32-hour training 8 times on subjects such as the "Issues of concern in respect to dealing with witnesses, victims, suspects and the accused", "Professional errors during criminal proceedings, and its prevention", "Ensuring human rights in the course of combating the crimes", "Issues of concern in dealing and offering services to the citizens, who committed minor offences or who are apprehended", "Methods

and tactics in resolving a misdemeanor", and "Ensuring the rights of the suspects or accused during the criminal proceedings" involving 521 officers in charge of inquiry and investigation.

100. Also on the basis of internal resources 16-hour human rights training was specifically organized on the subjects such as "Torture and Human Rights" and "Restricting Human Rights" within the "Training the Trainers" program in cooperation with the "Amnesty International" organization that involved 82 trainers in duplicated numbers.

101. Annually no less than once a training was conducted by the local police departments and divisions on subject of ensuring the rights of the participants of criminal proceedings in cooperation with the governmental and non-governmental organizations such as the Gender Equality Center, National Center against Violence, Human Rights Development Center, National Human Rights Center involving the relevant officers.

Article 11

102. For the purposes of ensuring the security of the victims and witnesses of the crime, to conduct the criminal proceedings of emotionally traumatized and terrified victims without the possibility to meet with the suspects, as well as to prevent from torture the suspects or the accused, the activites on fully equipping and furnishing a separate interrogation room, a police line-up room, and monitoring room at the central and local police departments and divisions were carried out locally.

103. Due to the lack of opportunities to furnish a separate room at the Ulaanbaatar city's police divisions of some districts the surveillance cameras were installed at the rooms of inquiry and investigative officers, which are being used in such operations.

104. In order to prevent from torture, and oversee the implementation of the procedures and guidelines on the interrogation of the arrested, detained and incarcerated persons the attitude and communication of the police officers are being monitored.

105. Meetings of the professional bodies in support of the investigation activities involved 2,579 authorized officials (inquiry officers, investigators, prosecutors, judges, inspectors of the intelligence and anti-corruption authority) in duplicated numbers, who met with a total of 3,150 suspects and the accused, and conducted tasks related to criminal proceedings such as ensuring the security of the participants, overview and protection, confidentiality, and conducting immediate measures, whereby no cases of torture or inhuman, degrading treatment were reported.

106. Within the provision on the "Investigation of the prison deaths" for the period of 2008-2013 108 prisoners' deaths that were registered for this period at the detention centers of the General Authority for Implementing Court Decisions were pursued as a criminal case, investigated and were resolved.

107. Article 56 of the Constitution of Mongolia stipulates, "the Prosecutor shall supervise the registration of cases, investigation and the execution of punishment and participate in the court proceedings on behalf of the State". On the other hand, due to the fact that the establishment of the Investigative Unit at the State General Prosecutor's Office conflicted with this constitutional provision it was repealed by the State Great Hural of Mongolia.

108. In accordance with the law to amend the Criminal Procedure Code the IAAC is conducting investigation on the crimes that used to fall under the jurisdiction of the Investigative Unit at the General Prosecutor's Office only in relation to such crimes as the crimes on malfeasance in office and corruption committed by the intelligence officers, police officers, inquiry officers, investigators, prosecutors and judges. In other words, the lawmakers were able to change a peculiar situation, whereby the IAAC was not able to conduct investigation of crimes that fell under its jurisdiction if the aforementioned persons

committed such crimes, but instead the Investigative Unit at the General Prosecutor's Office investigated these cases.

109. Due to the fact that the Investigative Division of the IAAC carried out inquiry and investigation of crimes related to malfeasance in office and corruption committed by persons other than intelligence officers, police officers, inquiry officers, investigators, prosecutors, and judges it does not constitute a novely for IAAC. For the period from 7 September, 2007, until 7 October, 2010, the Investigative Division of the IAAC has been conducting inquiry and investigation of crimes on malfeasance in office and corruption committed by intelligence officers, police officers, inquiry officers, investigators, prosecutors and judges. The State Great Hural by amending the law transferred the jurisdiction of the Investigative Unit at the General Prosecutor's Office on the inquiry and investigation of crimes related to malfeasance in office and corruption committed by the intelligence officers, police officers, inquiry officers, investigators, prosecutors and judges, which was established in accordance with resolution No. 170 dated 7 October, 2010, by the Prosecutor General of Mongolia, back to the IAAC.

110. From international practices it can be seen that the jurisdiction to investigate the crimes is established in accordance with the law including its provisions on the type of crimes. On the other hand, depending on the cases where the crime is committed by several acts on the territories of several aimags and soums the right of the prosecutor to determine the appropriate jurisdiction for inquiry and investigation is left untouched.

111. Therefore, it should be pointed out that by changing the jurisdiction for inquiry and investigation of crimes committed by public servants of special service posts no changes were made to the supervisory function of the prosecutor. If a complaint is raised in relation to the inquiry and investigation the prosecutor continues to be entitled to exercise supervision and change the jurisdiction for regulatory purposes at any stage of the proceedings.

112. The fact that the General Prosecutor's Office, which in accordance with paragraph 1 of Article 56 of the Constitution of Mongolia implements a function to "supervise the registration of cases, investigation and the execution of punishment and participate in the court proceedings on behalf of the State", had an Investigative Unit that investigates all crimes including the crimes on malfeasance in office and corruption committed by the intelligence officers, police officers, inquiry officers, investigators, prosecutors and judges, and where the prosecutor supervised the actions by their own investigators, created not only risks for prosecutors to be influenced by the investigators, for their independence to be adversly affected, and for the conflicts of interest to arise but also due to the fact that they did not have a right to carry out immediate measures there was a limited opportunity to resolve the crimes related to corruption and malfeasance in office.

113. Provision 1.3 of the Chapter on "Country with a Law Governance" of the policy and action program of the President of Mongolia sets an objective to "combat persistently the corruption, bribery, governmental bureaucracy, and the illegal activities by government officials. Further objective is to establish and implement a practice by law that places an equal accountability on any law-breakers irrespective of their wealth, political affiliation or nepotism", while its provision 1.4 outlines an objective to "continue the efforts to improve the legal environment to combat corruption and abuses of office". The action program of the Government for the period of 2012-2016 advances a goal to "implement radical reforms to combat corruption and bureaucracy".

114. One of the forms of implementing the goals and objectives specified in these documents inevitably includes efforts to increase the opportunity and conditions for investigation of crimes related to corruption and malfeasance in office by a single organization by amending the relevant laws and legislation.

115. The action program of the Government for the period of 2012-2016 sets an objective to "re-organize the investigative and criminal police department as an investigative department by changing its functions and organizational structure, and to set up a court examination body under the investigative department", and within this objective legal sector reforms have been initiated, where the draft Law on the Investigative Department has been developed and submitted to the State Great Hural.

116. In line with the policy of reducing the number of investigative bodies the integration of the Investigative Unit at the General Prosecutor's Office into the structure of the IAAC, where the number of investigative bodies has been reduced by one and the IAAC has obtained an additional jurisdiction for investigation of certain crimes, constitute one of the basis of the legal sector reforms.

117. The police departments and divisions in charge of a particular territory have established chambers to serve the citizens, which lists the location and phone numbers of the bar associations or the advocates operating on a given territory, and for the purposes of publicizing information on police activities as well as disseminating the required legal expertise electronic websites and information boards are being operated to create opportunities for obtaining legal assistance.

118. In aimags and rural areas a telephone line is being operated for the purposes of receiving complaints from citizens on the illegal activities, inhuman and degrading treatment of the police. In addition, the websites of the police deparments are being promoted among the citizens, and information is being obtained from citizens. All local police departments and divisions now have electronic websites.

119. For the purposes of preventing torture, other cruel, inhuman or degrading treatment the recommendations No. 3/207 of the National Human Rights Commission of Mongolia dated 25 March, 2013, and the duties with a reference No.3/1788 dated 9 April imposed from the Administration Management Division of the General Police Department were disseminated among all police officers, and written guarantees were being obtained from the officers in charge of police inquiry and investigation for its implementation.

Article 12

120. In accordance with the jurisdiction established by Article 27 of the Criminal Procedure Code the Police Division, and the investigator in charge of the particular territory shall carry out investigations related to the crime of torture. From the statistical data of the Investigative Unit that was dissolved more than 90% of criminal complaints and information were related to the police officer. For the period of 2007-2012, in relation to the data on the suspects investigated by this Unit there were 25 judges, 26 prosecutors, 115 investigators, 108 inquiry officers, 1,094 staff members of the police, and 39 intelligence officers.

121. The study of the resolution of the complaints related to the allegations of torture for the period of 2007-2012 reveals that 14 cases were dismissed on the ground that the allegations of torture cannot be established, 5 cases, which were determined to constitute the crimes of torture, were dismissed by the law on amnesty, 5 cases received sentencing from the courts, and 15 cases were refused to initiate criminal proceedings on the basis that these were related to the improper communication and other grounds.

122. The National Human Rights Commission of Mongoila received and resolved 650 complaints in 2013, 289 of these complaints were received from the people, who were incarcerated in detention centers or prisons. As of 2014, 282 complaints were received, out of which 134 were from people, who were incarcerated in detention centers or prisons. This number is expected to increase in the future.

123. In recent years, the applications and complaints started to allege the crimes of torture, inhuman and degrading treatment. Therefore, the Commission regularly conducts inspections and organizes trainings in prisons.

124. Furthermore, the issue on the accession to the Optional Protocol to the Convention against Torture was studied, and it was discussed by the Cabinet meeting. Within this scope a study is being conducted on amending the Law on Marshals Service and the possiblity of transferring to Marshals Service a right to carry out investigations on the crimes against the judicial proceedings.

Article 13

125. Law on Rendering Legal Assistance to the Indigent Defendants that was adopted by the parliamentary session in 2013 came into force on 1 January, 2014.

126. Within the scope of this Law, by the joint resolution No. A/05/8 of the Minister of Justice and Minister for Finance dated 20 January, 2014, the number and location of the branches of the legal aid centers were approved. Legal aid center with a structure of a secretariat and 32 branches conducts its operations in 9 districts of the capital city, 21 aimags and 2 soums to render legal assistance to the indigent defendants. Currently, 9 officers of the secretariat, 47 state advocates, and 4 assistant advocates are conducting their operations. (Appendices 7, 8, 9)

127. In total 1,046 accused persons related to 982 cases approached the legal aid center in February-June, 2014, in order to receive free advocacy assistance. Out of these 479 cases were fully resolved at the courts, 66 cases were resolved prior to reaching the court, and 358 cases are at the stage of being resolved. Also 79 cases out of the total number of citizens, who approached the legal center, were refused on the grounds that they do not fall under the jurisdiction, or determined to be financially capable, or the advocate is being challenged. These included 37 cases, where the defendants were determined to be financially capable, 24 cases that do not fall under the jurisdiction, 9 cases, where the advocate is being challenged, and 9 cases, where the free legal assistance is being refused based on other grounds.

128. State advocates of the branches of the legal aid centers offered free legal consultation to 2,128 citizens. For example, legal aid centers in Bayan-Ulgii, Uvs, Gobi-Altai, and Dundgobi aimags as well as Nalaikh, Khan-Uul and Bayanzurkh districts provided the majority of the first instance legal assistance to citizens. According to the data for the first 4 months of 2014, the average number of cases allocated to an advocate per month is around 5-6 cases. This number is expected to increase in the future.

129. From the above table it can be concluded that the majority of people approached the legal aid center in order to receive advocacy assistance at the stage of investigation (49.2%) and first instance courts (28.3%).

130. Classification of cases resolved by the courts, as submitted by state advocates include:

- 41 or 7.5% were grave crimes;
- 93 or 17% were serious crimes;
- 342 or 62.7% were less serious crimes;
- 76 or 13.9% were minor crimes respectively (Appendix 7).

131. Majority of criminal cases, where defendants received legal assistance, were less serious crimes (62.7%).

132. The comparison of the types of crimes for which the defendants received legal aid includes robbery (53.3%), intentional infliction of a minor, less serious, or severe bodily injury (20.1%), and hooliganism (10%). (Appendix 8) The above statistical data show that the crime infringing the ownership right constitutes the majority of crimes. Indigent defendants are mostly people who are unemployed, do not have a regular income, and come from multi-member households.

133. Study on the access to the state advocates, on whether this information is disseminated among the public, and from where the majority of people approach the state advocates revealed that the client and their representatives directly approached the state advocates. 43% of the clients approached advocates directly. In addition, in many cases the law enforcement organizations such as the courts, investigation office, pre-trial detention centers approach the secretariat of the legal aid center for the appointment of the advocates. (Appendix 9)

134. Internal Monitoring and Security Division of the General Police Department receives and investigates complaints from the ctiziens and organizations related to the police officers' discipline and ethics, and for the period of 2008-2013 no petitions or complaints were received from the citizens and organizations related to the case of the "police officer subjecting to a torture and forcing a confession".

135. Inspection of the national criminal database shows: 1 case of the crime on subjecting to a torture by forcing a testimony by an inquiry officer or investigator by threat or the use of force, torture, humiliation, deception or other illegal methods was registered in 2010, 9 such cases in 2011, 1 case in 2012, and 1 case in 2013, which were resolved by the courts. 5 such crimes were registered in the capital city, 3 in Uvs aimag, 1 each in Dornogobi, Selenge, Khentii, and Hovd aimags.

Article14

> "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation". Paragraph 5 of article 9 of the ICCPR
>
> "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation". Paragraph 1 of article 14 of the Convention against Torture

136. The above provisions guarantee the right to obtain compensation for physical injury and emotional suffering as a result of torture. Provision 3.3 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power states that where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the state whose officials or agents were responsible for the damage inflicted.

137. In cases where the government under whose authority the victimizing act or omission occured is no longer in existence, the state or government successor in title should provide restitution to the victims. Therefore, in accordance with international regulations the Government of Mongolia bears a responsibility towards fair and adequate compensation for the damage inflicted as a result of torture. In other words, the state is responsible in providing restitution to the victims of torture.

138. In addition, paragraph 14 of article 16 of the Constitution of Mongolia states, "the citizens of Mongolia ... shall have the right to be compensated for the damage illegally caused by others...", which guarantees the right to obtain compensation for the damage.

139. State of the damages being compensated: Due to the poor implementation of the above legal provisions in practice, and the lack of specific budgetary funding for compensation to budgetary organizations, as determined by court decisions, the implementation of such court decisions are being stagnant since 2009, with accumulation of the documents for executing the payment since 1996 in large numbers, whereby the payment ordered by the court decisions continue to accrue over the years, which creates a difficult situation for the implementation of court decisions.

140. As a result of these activities, in 2008 it was decided that the compensation to the citizens for the damage that was inflicted during the criminal proceedings is to be retrieved from the government special fund, and consequently, according to the government resolution in 2008, 16 citizens received compensation in the amount of 183.2 million tugrugs. Even though the court makes a decision on the compensation of the damage inflicted in the course of criminal proceedings from the government special fund in accordance with the Law on Government Special Fund, this compensation is being allocated and distributed from the annual budget of the Ministry of Justice as a compensation from the wrongful actions of the governmental organizations or public servants.

141. Within the framework of these activities for the period of 2008 – 10 September, 2014, from the measures to issue 41.1 billion tugrugs from the government 403 citizens obtained 7.7 billion tugrugs, and from these 137 citizens received 1.5 billion tugrugs of compensation for the wrongful actions of the inquiry officer, investigator, prosecutor, or a judge during the criminal proceedings (this amount is included into the amount of compensation issued to citizens), and, in addition, 234 legal entities received a compensation in the amount of 33.4 billion tugrugs on the basis of the court order.

142. Annual allocation of funds in respect to the above monetary capital:

(1) In 2008, 183.2 million tugrugs were distributed to 16 citizens, as a result of the damage from the criminal case.

(2) In 2009, the compensation was distributed among 132 citizens and legal entities out of 3.4 billion tugrugs allocated into the budget of the Minister of Justice.

143. In 2011, 11.7 billion tugrugs were allocated into the budget of the Minister of Justice, which were distributed to 65 citizens and legal entities. These include:

- 30 citizens obtained a compensation in the amount of 229.4 million tugrugs, and out of these 3 victims of crimes received 11.7 million tugrugs;
- 35 legal entities obtained a compensation in the amount of 11.5 billion tugrugs.

144. In 2012, 12 billion tugrugs were allocated into the budget of the Ministry of Justice, which were distributed to 240 citizens and legal entities. These include:

- 165 citizens received 4.3 billion tugrugs, and from these 44 citizens, who fell victims to the crimes, obtained a compensation in the amount of 417.8 million tugrugs;
- 75 legal entities were allocated with 7.7 billion tugrugs.

145. In 2013, 6.7 billion tugrugs were allocated into the budget of the Minister of Justice, which were distributed to 61 citizens and legal entities. These include:

- 46 citizens were compensated with 542.3 million tugrugs, and out of these 30 citizens, who became victims of crimes, received a compensation in the amount of 484.4 million tugrugs;
- 15 legal entities received a compensation in the amount of 6.2 billion tugrugs.

146. In 2014, 6.7 billion tugrugs were allocated into the budget of the Minister of Justice, which are being distributed in the following way:

- 29 citizens received 1.6 billion tugrugs, and out of these 9 citizens, who were injured as a result of the crime, received a compensation in the amount of 108.2 million tugrugs;
- 11 legal entities obtained a compensation in the amount of 4.5 billion tugrugs, and the distribution of the rest of the budget is not being resolved as of yet.

147. Claim by the National Human Rights Commission of Mongoila: Sub-paragraph 1 and paragraph 1 of Article 17 of the Law on the National Human Rights Commission of Mongolia legislates the powers of the Commission with respect to making a decision on complaints by stating, "to submit claims to the courts with regard to issues on violations of human rights and freedoms by business entities, organizations, officials or individual persons, to participate in person or through a representative in judicial proceedings in accordance with the procedure established by law", whereby the Commission submitted a claim to the state on behalf of the victims for the damage inflicted to them as a result of torture, who were undergoing investigation by being falsely implicated into the crimes, and were incarcerated, and such judicial practice has been established.

148. The Commission was established in 2001, and in the last period a total of 24 claims were submitted to the courts; however, the court in majority of cases related to the psychological and physical damage dismissed the case, and in minority of cases a very minor amount is being awarded. Even though the Commission submitted a claim against the Government on the compensation to the victims of false convictions and subjection to torture in the amount of 1,021,322,000 tugrugs the court awarded only 209,475,149 tugrugs, which constitutes a mere 21% of the total amount of the claim.

Article 15

149. During the reporing period major amendments were made to the Criminal Procedure Code of Mongolia in 2008 and 2014 respetively. These amendments were related to legislating and guaranteeing human rights.

150. The following are some of the amendments made to the Criminal Procedure Code in relation to evidence: Article 7 of the said Law, "Judicial proceedings shall be conducted on the basis of equal participation of the parties and the adversarial principle." 17.1. Judicial proceedings shall be based on adversarial litigation between the prosecuting and defending parties with equal rights. In exercising the adversarial principle, the court of the first instance shall provide equal opportunities to all the parties in the court proceedings, including their advocates, legal representatives, and public prosecutors to question and respond, introduce evidence, provide comments, and defend their justification or oppose thereto. (Second sentence of this provision was added by the law on 24 April, 2014).

> Article 49. Grounds prohibiting the participation of judges in criminal proceedings
>
> 49.1.5. if there are conditions that might create conflicts of interests.
>
> *(This provision was added by the law on 24 April, 2014).*
>
> Article 79. Evidence
>
> 79.1. Facts and information, with respect to circumstances of a crime, obtained in accordance with the grounds and rules set by this Law shall be deemed to be evidence. *(This provision was amended by the law on 3 December, 2009)*

Article 134. Freezing of property

134.1. For the purpose of securing a civil suit or possible confiscation of a property, if there are sufficient grounds to freeze the property of an accused, a suspect, or of other persons legally bearing material responsibility for their actions, or sufficient grounds to prove that the property or income constitute the proceeds of the crime then the property or the income shall be frozen.

(This provision was revised by the law on 16 January, 2014)

134.11. In implementing the measures to freeze the assets or the income obtained as a result of the crime, if the owner of the proceeds of the crime is unknown, or if informing the owners is prejudicial to the purposes of these measures then the owners may not be informed in advance.

(This provision was added by the law on 16 January, 2014)

Article 208. Grounds for terminating the criminal case

208.1. A criminal case shall be terminated on the following grounds:

208.1.1. if there are grounds indicated in Articles 24.1.1-24.1.6 of this Law.

(This provision was amended by the law on 1 February, 2008)

Article 16

151. In the aftermath of the events of 1 July, 2008, during the trial of the leadership of the police for the death of 5 people killed during the riots, if prior to these events there was a common understanding that the police is a militarized organization that works in accordance with the orders, at the court proceedings a dispute arose that the police is an organization that serves the citizens, therefore, such cases cannot be tried as the instances of military crimes.

152. An argument was advanced that the police is a law enforcement organization with a clear objective to serve the citizens in fulfilling its law enforcement mission, and it is not a military organization. On the other hand, even though the police are not a military organization it is not an administrative body either. Therefore, a question arose as to what kind of an organization the police should be. Consequently, in line with our view that there should be a "Law enforcement organization" with a new status in between the military and civil organizations we are carrying out these reforms.

153. On the basis of the need to create legal guarantees to ensure the implementation of the activities of the law enforcement organizations and officials such as the police, investigative and border services, taxation and customs services, who have the powers to register and investigate any reasonable suspicions, crimes and violations under the common principles and procedures that uphold human rights and freedoms, free from conflict of interest and corruption, a draft law on Law Enforcement Activities is being developed.

154. The concept of "Law enforcement activities" will include urgent actions for detection of the crime, immediate measures for case registration and investigation, and activities on enforcing the public order, ensuring the public security, and prevention of crimes, and the legal status of the law enforcement officer will be determined in accordance with the specialized law. This way, the restriction of the inviolable human rights, and the infringement on others' property will be carried out under single standard.

155. Consequently, by adopting a common standard for law enforcement activities types of torture such as the unreasonable detention, posing leading questions during interrogations, and inhuman and degrading treatment of others during the criminal proceedings that continue to exist will be subject to restriction.

156. Due to the fact that many activities, grounds and procedures that are legislated by the Criminal Procedure Code also relate to law enforcement activities a draft Criminal Procedure Code is being developed.

157. In this draft law the judge, who has the powers to authorize all actions starting from the arrest of the suspect, will also consider whether the pre-trial detention, and all other actions related to restricting the human rights ensure human rights in order to approve such actions.

158. In addition, some of the provisions of the action program of the government for the period 2012-2016, as approved by the State Great Hural by resolution No.37, 2012, related to the creation of new bodies such as the "investigative office" charged with investigation of organized crimes carried out by covert means, and the "marshals service" charged with ensuring the security of witnesses, victims as well as the judges at the judicial stage are being realized.

159. In 2014, Law on Police Service and the Law on Marshals Service are being newly adopted and implemented as well as amendments are being made to the Anti-Corruption Law.

(1) Moreover, the following laws and legislation include provisions prohibiting the torture and other cruel acts during criminal proceedings such as inhuman and degrading treatment or punishment by the state. For example, paragraph 1 of Article 41 of the Law on Police Service legislates, "If the police officer in violation of police service legislation and their oath is not subject to criminal liability then he/she shall be subject to disciplinary sanctions in accordance with the Law on the Legal Status of the Law Enforcement Officer, the present Law and the Police Code of Conduct";

(2) Paragraph 1 of Article 37 of the Law on Marshals Services provides, "If the officer in violation of the marshals service legislation and their oath is not subject to criminal liability then he/she shall be subject to disciplinary sanctions in accordance with Law on the Legal Status of the Law Enforcement Officer, the present Law and the Marshal Officer's Code of Conduct;

(3) Sub-paragraph 3 and paragraph 1 of Article 7 of the Anti-Corruption Law identifies the prohibited actions such as to "exert illegal pressure on the work of officials holding positions of similar rank, subordinates or monitoring officials".

160. With the purpose of clearly defining the differences between the legal status of the lawyer or the law enforcement officer and the activities of the lawyer during the past period of 2012-2013 the package of laws on judicial reforms initiated by the President were adopted. The Law on the Legal Status of Lawyers, the Law on Courts, and the Law on the Legal Status of the Judges were adopted, and the next stage will be the development of the draft Law on the Status of Prosecutors.